

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THERESA OKERSON,

Plaintiff,

v.

KOHL'S, INC.,

Defendant.

CAUSE NO. 1:22-cv-464

NOTICE OF REMOVAL OF ACTION

Defendant Kohl's, Inc. ("Kohl's"), respectfully gives notice of the removal of this civil action from the Hamilton Superior Court, State of Indiana, to the United States District Court for the Southern District of Indiana, Indianapolis Division, pursuant to 28 U.S.C. §§1332, 1441, and 1446. In support thereof, Kohl's states as follows:

1. On February 2, 2022, Plaintiff Theresa Okerson filed her Summons and Complaint for Damages in the Hamilton Superior Court, State of Indiana, under cause number 29D02-2202-CT-848. Plaintiff alleged that she sustained permanent physical injuries as a result of a trip and fall at the Kohl's Department Store located at 2005 E. Greyhound Pass, Carmel, Hamilton County, Indiana.

2. Plaintiff is domiciled in the City of Anderson, State of Indiana. Plaintiff is therefore a citizen of the State of Indiana for diversity purposes.

3. Kohl's is a Delaware corporation, with its principal place of business in the state of Wisconsin. Kohl's is therefore a citizen of the states of Delaware and Wisconsin for diversity purposes.

4. Under 28 U.S.C. § 1446(c)(2)(B), removal is appropriate if the court finds by a preponderance of the evidence that the amount in controversy exceeds \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87-89 (2014) (holding that “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold” and “should be accepted when not contested by the plaintiff or questioned by the Court”). Pursuant to Local Rule 81.1, Kohl’s certifies that to the best of its knowledge, information and belief the amount in controversy exceeds \$75,000 exclusive of interest and costs. Counsel for Plaintiff has alleged that she incurred a nondisplaced left humerus fracture and a torn left rotator cuff as a result of the subject incident, and claimed that she may require surgery to repair the rotator cuff in the future. Additionally, Plaintiff’s Complaint for Damages has an open prayer for damages, alleging that Plaintiff “incurred medical expenses, lost wages and other special expenses, and will incur future medical expenses, lost wages and other special expenses” as a result of the subject incident, for which Plaintiff has issued a settlement demand in excess of \$75,000.

5. Because complete diversity of citizenship exists, and the amount in controversy exceeds the jurisdictional threshold, diversity jurisdiction exists under 28 U.S.C. § 1332(a).

6. This cause is removable under 28 U.S.C. § 1332 and none of the impediments to removal under 28 U.S.C. § 1445 are present in this action.

7. The United States District Court for the Southern District of Indiana, Indianapolis Division, is the United States District Court and division encompassing the Hamilton Superior Court, where this action was filed and is pending. Venue is therefore proper in the United States District Court for the Southern District of Indiana, Indianapolis Division, under 28 U.S.C. §1441(a).

8. A copy of the Summons and Complaint for Damages was served upon Kohl's on February 11, 2022 by certified mail.

9. Kohl's is filing this Notice of Removal within thirty days after service of Plaintiff's Summons and Complaint for Damages. This Notice of Removal is therefore timely under 28 U.S.C. §1446(b).

10. Copies of all pleadings, process, and orders served upon Kohl's in the state court action are attached as Exhibit A, as required by 28 U.S.C. §1446(b).

11. As required by 28 U.S.C. §1446(d), written notice is being provided to all adverse parties and to the Clerk of the Hamilton Superior Court that this Notice of Removal is being filed in this Court.

12. Kohl's expressly reserves all available defenses. By removing this action to this Court, Kohl's does not waive any rights or defenses available under federal or state law. Nothing in this Notice of Removal shall be construed as an admission that Plaintiff's allegations are sufficient to state a claim or have any substantive merit.

WHEREFORE Defendant Kohl's, Inc., prays that the entire state court action now pending in the Hamilton Superior Court, State of Indiana, under cause number 29D02-2202-CT-848 be removed to this Court for all further proceedings, and that no further proceedings be held in the Hamilton Superior Court, and for all other relief just and proper in the premises.

Dated this 10th day of March, 2022.

/s/ Matthew J. Jankowski

Matthew J. Jankowski, #20972-49

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2022, a true and correct copy of the foregoing was electronically filed using the Court's CM/ECF system and electronically served on the following:

Dean J. Arnold
Ken Nunn Law Office
104 S. Franklin Rd.
Bloomington, IN 47404

/s/ Matthew J. Jankowski